IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 36046 of 2007(N)

AGAINST THE ORDER DATED / / IN IA.422,423/2007 IN OS.296/2006 of MUNSIFF COURT, OTTAPPALAM

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PETITIONER:

INDIRA DEVI, W/O. ACHUTHANKUTTY P.K.,
E.34, N.G.O. QUARTERS, KALLEPULLY, PALAKKAD TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

K.P. MOHANAN,
S/O. M.CHANDRASEKHARAN NAIR,
CHANDRAKANTHAM,
LAKKIDI AMSOM, DESOM,
LAKKIDI POST,OTTAPALAM TALUK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 36046 OF 2007

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Dated this the 6th day of December, 2007.

J U D G M E N T

This writ petition is filed to set aside the orders passed in I.A.Nos.422 and 423/07 of the Munsiff, Ottappalam. The suit is one for realisation of the amount due under a promissory note alleged to be executed by the defendant in favour of the plaintiff. In answer to the plaint the defendant has filed a original written statement contending that she has not received any amount. A perusal of paragraph 2 of the original written statement would clearly show that the plaintiff had persuaded his relative Madhana Gopal to give a loan of Rs.50,000/- and at that time the defendant had put her signature on a blank paper affixed with a revenue stamp and handed over the blank paper to him and also issued a blank cheque for Rs.50,000/-. The cheque was returned but the paper containing that blank signature was not returned and the defendant apprehends that the said paper has been used for creating a document of this nature.

2. So it emerges from the original pleadings that the defendant had put her signature on a revenue stamp in a blank paper which was not returned. But now the defendant wants to turn topsy turvey and therefore she moves an application to receive additional written statement contending for the position that she has not put her signature in the document and the document produced along with the plaint is a forged one and that an expert may be appointed to compare the signature. The Court below rejected both the applications. I also do not find any reason to deviate from the said finding for the reason that the defendant with both her eyes opened admits the signature in a blank paper affixed with a revenue stamp and apprehends that the said paper has been utilized by the plaintiff to file the suit. After some stage she wants to have a totally different pleadings contending for the position that it is not her signature at all and it requires a comparison by an expert. It is a settled principle that the courts should be liberal in receiving additional written statement or

amendment of pleadings but if it causes substantial prejudice it shall not be allowed. The petition must also be with bonafides.

3. Here is a case where there is crystal clear pleadings in the original written statement regarding the circumstances under which the document was executed. A party cannot be permitted to blow hot and cold at the same time and change the pleadings at his whims and fancies so as to cause injury to the other side and therefore I find the petition lacks total bonafide and therefore the additional written statement cannot be accepted.

4. So far as the prayer for sending the document to the finger print expert is concerned that also cannot be accepted now for the reason that latter by the original written statement admits her signature in a blank paper and then alleged by her that the said paper has been used by the plaintiff to create a document. At the same time, I make it clear that mere putting of a signature in a blank paper is not a ground to show that a person has executed a document. It

is a matter which requires evidence where the plaintiff has to satisfy the conscience of the Court that the document has been executed and mere presence of a signature is not sufficient to prove the execution of the document.

With this observation, this writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

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